

001889

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO1. CERTIFICATE NUMBER
(FOR AUDITOR'S USE ONLY)
AC # 2800036TO:
CITY ATTORNEY2. FROM (ORIGINATING DEPARTMENT):
Department of Finance - Debt Management3. DATE:
July 12, 20074. SUBJECT:
Consultant Services Agreements for CFD No. 4 (Black Mountain Ranch Villages)5. PRIMARY CONTACT (NAME, PHONE & MAIL STA.)
Elizabeth Kelly / 236-6932 MS 7B6. SECONDARY CONTACT (NAME, PHONE & MAIL STA.)
Chuck Wilcox / 533-45197. CHECK BOX IF REPORT TO
COUNCIL IS ATTACHED ☐

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND	79750	79750	79754
DEPT.	79750	79750	79754
ORGANIZATION			
OBJECT ACCOUNT	4151	4118	4151
JOB ORDER	079750	079750	079754
C.I.P. NUMBER			
AMOUNT	\$ 58,500	\$35,000	\$45,000

9. ADDITIONAL INFORMATION / ESTIMATED COST:
There is no fiscal impact to the City associated with this action. Pursuant to Council Policy 800-03, Section III.B.1, the developer is required to deposit funds (eligible for reimbursement from bond proceeds) in advance to cover all the costs of analyzing and administering the project.

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIGINATING DEPARTMENT	<i>Elizabeth Kelly</i>	7/12/07	8	CFO / DEPUTY CHIEF	<i>[Signature]</i>	7/19/07
2	EAS	<i>[Signature]</i>	7/13/07	9	COO	<i>[Signature]</i>	
3	EOC	<i>[Signature]</i>	7/16/07	10	CITY ATTORNEY	<i>[Signature]</i>	7/16/07
4	PURCHASING	<i>[Signature]</i>	7/17/07	11	ORIGINATING DEPARTMENT	<i>[Signature]</i>	7/18/07
5	LIAISON OFFICE	<i>[Signature]</i>	7/17/07	DOCKET COORD: <i>[Signature]</i> COUNCIL LIAISON: <i>[Signature]</i>			
6	AUDITOR	<i>Mikki Gutierrez</i>	7/17/07	COUNCIL PRESIDENT <input checked="" type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION <input checked="" type="checkbox"/> REFER TO: <input type="checkbox"/> COUNCIL DATE: 7/31/07			
7							

11. PREPARATION OF: ☐ RESOLUTION(S) ☒ ORDINANCE(S) ☐ AGREEMENT(S) ☐ DEED(S)

An introduction of an ordinance of the Council of the City of San Diego to amend an Agreement between the City of San Diego and Fieldman, Rolapp and Associates for financial advisory services; to amend an Agreement between the City of San Diego and David Taussig & Associates for special tax consulting services; and to authorize the City Attorney to amend an agreement with Stradling, Yocca, Carlson and Rauth for bond counsel and disclosure counsel services. Contingent upon the amendment or extension of the Reimbursement Agreement between the City and the developer.

11A. STAFF RECOMMENDATIONS:

Adopt the ordinance.

12. SPECIAL CONDITIONS:

COUNCIL DISTRICT(S): District 1

COMMUNITY AREA(S): Black Mountain Ranch

ENVIRONMENTAL IMPACT: This activity is exempt from CEQA pursuant to State CEQA Guidelines, Section 15061(b)(3).

HOUSING IMPACT: None

OTHER ISSUES: Six votes required. The San Diego City Charter, Section 99, requires an ordinance that is approved by two-thirds majority vote of the City Council for contracts or agreements extending for a period of more than five years, after holding a public hearing which had been duly noticed in the official City newspaper at least ten days in advance.

**EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO**

DATE ISSUED:	July 17, 2007	REPORT NO:
ATTENTION:	Council President and City Council	
ORIGINATING DEPARTMENT:	Debt Management Department	
SUBJECT:	Amendments to Agreements for Financial Advisory, Special Tax Consulting and Administration, and Bond Counsel services for Community Facilities District No. 4 (Black Mountain Ranch Villages)	
COUNCIL DISTRICT(S):	District 1	
CONTACT/PHONE NUMBER:	Chuck Wilcox (619-533-4519)	

REQUESTED ACTION:

Authorize the execution of a first amendment to the contract with Fieldman, Rolapp & Associates for Financial Advisory Services in an amount not to exceed \$58,500, including out of pocket expenses, and a first amendment to the contract with David Taussig & Associates, Inc. for Special Tax Consulting Services in an amount not to exceed \$80,000, including out of pocket expenses, for services related to Community Facilities District No. 4 (Black Mountain Ranch Villages) ("CFD No. 4"). Also authorize the City Attorney to amend the contract with Stradling, Yocca, Carlson & Rauth for Bond Counsel and Disclosure Counsel services, and to pay fees for such services in an amount not to exceed \$130,000, including expenses.

STAFF RECOMMENDATION:

Approve the requested actions.

EXECUTIVE SUMMARY:

CFD No. 4 is generally located in the Black Mountain Ranch Community Planning Area, and was formed in 2000. In accordance with the Mello-Roos Community Facilities Act of 1982 (the "Act") and Council Policy 800-03, and following public hearings and a special election conducted pursuant to the Act, the City Council adopted the necessary resolutions to form CFD No. 4. In addition, the City Council authorized the levy of special taxes on taxable property interests within the District and the issuance of bonds in an amount not to exceed \$25.0 million. Such bond authorization includes amounts to acquire eligible facilities, as well as amounts to cover the required debt service reserve fund and costs of formation and issuance. In 2002, the City Council adopted a resolution to modify the Rate and Method of Apportionment of Special Taxes for CFD No. 4 and to increase the bond authorization to an amount not to exceed \$30.0 million. This resolution was approved following the filing of a written petition, in accordance with the Act, by an owner of more than 25% of the property within the District requesting such modifications, and following a public hearing and special election.

The district was formed following the submission of an application by Black Mountain Ranch LLC to the City for public financing of certain infrastructure (the "Eligible Public Facilities") required as a condition of the City's approval of the land uses in the area, pursuant to the approved tentative map(s) and the Public Facilities Financing Plan for Black Mountain Ranch. The Eligible Public Facilities generally include: the extension and widening of Camino Del Sur between Carmel Valley Road and Camino Del Norte, along with appurtenant underground utilities; the extension and widening of the Eastern portion of Carmel Valley Road, along with appurtenant underground utilities; and, the construction of a sewer pump station and gravity sewer lines.

At the time CFD No. 4 was formed, the issuance of bonds was not yet feasible, and it was originally anticipated that a first series of bonds would be issued via a public offering, estimated to occur some time in 2004, after development of the project had progressed enough to provide sufficient security for the bonds. However, due to certain matters affecting the City beginning in 2004, a public offering of the bonds was impacted and work relating to the issuance of bonds was put on hold.

It is now contemplated that the City could begin the process of re-assembling the Financing Team for CFD No. 4 and commencing work on the issuance. Due to the ongoing delays in the bond issuance process associated with the City's inability to access the public bond markets, it is necessary to amend the agreements with Fieldman, Rolapp & Associates (the "Financial Advisor"), David Taussig & Associates (the "Special Tax

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Consultant), and Stradling, Yocca Carlson & Rauth ("Bond and Disclosure Counsel") to provide for an extension of the term and related additional compensation for each contract. With respect to the Special Tax Consultant, the amendment would also provide for an expanded scope to include on-going administration services (e.g., services relating to annual special tax calculation and preparation and assistance with annual report preparation). Additional information regarding the amendments is provided below:

- Fieldman, Rolapp & Associates - The initial agreement with the Financial Advisor was executed on November 17, 2000. This City Council action would extend the term of the agreement for an additional three years. Total compensation under this proposed amendment is not to exceed \$58,500. Total compensation under the agreement, including the amendment, is not to exceed \$110,000 for services and \$10,000 for expenses.
- David Taussig & Associates - The initial agreement with the Special Tax Consultant was executed on January 19, 2001. This City Council action would extend the term of the agreement for an additional three years, covering special tax consulting and administration services associated with CFD No. 4. Total compensation under this proposed amendment is not to exceed \$35,000 for special tax consulting services and \$45,000 for administration services. Total compensation under the agreement and the amendment is not to exceed \$118,000 for services and \$10,000 for expenses.
- Stradling Yocca Carlson & Rauth - The initial agreement with Bond and Disclosure Counsel was executed on April 16, 2001 and amended on October 8, 2002. This City Council action would authorize the City Attorney's Office to extend the term of the agreement and provide for additional compensation. Total compensation under the agreement, including the amendment is not to exceed \$130,000, including expenses.

FISCAL CONSIDERATIONS:

There is no fiscal impact to the City associated with this action. Pursuant to Council Policy 800-03, Section III.B.1, the developer is required to deposit funds (eligible for reimbursement from bond proceeds) in advance to cover all costs associated with the special tax consulting services. In addition, all costs associated with special tax administrative services are borne by the District and recovered through the annual special tax levy.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

Managerial Action: Approval of Agreement with Fieldman, Rolapp & Associates, November 17, 2000 (C-10435).

Managerial Action: Approval of Agreement with David Taussig & Associates, January 19, 2001 (C-10573).

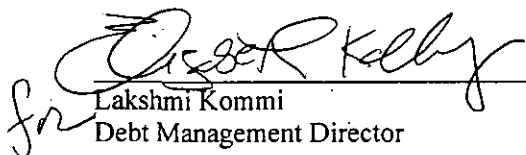
Managerial Action: Approval of Agreement with Stradling Yocca Carlson & Rauth, dated April 16, 2001 and amended on October 8, 2002.

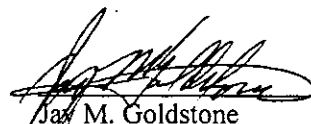
COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

None required.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

The contracts would be entered into with the following business entities: Fieldman, Rolapp & Associates; David Taussig & Associates, Inc.; and Stradling Yocca Carlson & Rauth. As described above, Black Mountain Ranch LLC is required to deposit funds to cover the contract amounts.


Lakshmi Kommi
Debt Management Director


Jay M. Goldstone
Chief Financial Officer

The City of San Diego
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER

001893

CERTIFICATE OF UNALLOTTED BALANCE

AC 2800036

ORIGINATING

DEPT. NO.:

56

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: _____ Fund: _____

Purpose: _____

Date: _____ By: _____

ACCOUNTING DATA

ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
TOTAL AMOUNT										

FUND OVERRIDE ☐

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: \$45,000.00

Vendor: David Taussig & Associates, Inc.

Purpose: Authorizing the use of funds for the amendment to the agreement for Administrative services for the CFD No. 4 - Black Mountain Ranch Villages.

Date: July 17, 2007 By: Mikki Gutierrez

ACCOUNTING DATA

ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
1	0	79754			9544					45,000.00
TOTAL										\$45,000.00

File: Adm'n WOFO 2000

Date WOFO Submitted: 7/13/2007

Input by: SH

Goals reflect statistical labor force
availability for the following: 2000 CLFA
Orange County, CA

City of San Diego/Equal Opportunity Contracting
WORK FORCE ANALYSIS REPORT

FOR

Company: Fieldman, Rolapp & Associates

I. TOTAL WORK FORCE:

	Black			Hispanic			Asian			American Indian			Filipino			White			Other		
	CLFA Goals	M	F	CLFA Goals	M	F	CLFA Goals	M	F	CLFA Goals	M	F	CLFA Goals	M	F	M	F	M	F	M	F
Mgmt & Financial	1.5%	0	0	10.6%	0	0	10.9%	0	0	0.3%	0	0	10.9%	0	0	6	1	0	0	0	0
Professional	1.8%	0	0	11.1%	1	0	11.8%	1	1	0.4%	0	0	11.8%	0	0	6	2	0	0	0	0
A&E, Science, Computer	1.4%	0	0	7.0%	0	0	25.5%	0	0	0.2%	0	0	25.5%	0	0	0	0	0	0	0	0
Technical	2.7%	0	0	15.7%	0	0	23.8%	0	0	0.3%	0	0	23.8%	0	0	0	0	0	0	0	0
Sales	1.3%	0	0	18.4%	0	0	12.1%	0	0	0.4%	0	0	12.1%	0	0	0	0	0	0	0	0
Administrative Support	2.2%	0	2	23.2%	0	1	11.8%	0	0	0.4%	0	0	11.8%	0	0	0	1	0	0	0	0
Services	1.3%	0	0	48.5%	0	0	11.4%	0	0	0.3%	0	0	11.4%	0	0	0	0	0	0	0	0
Crafts	1.2%	0	0	29.4%	0	0	15.5%	0	0	0.4%	0	0	15.5%	0	0	0	0	0	0	0	0
Operative Workers	0.7%	0	0	55.7%	0	0	21.3%	0	0	0.2%	0	0	21.3%	0	0	0	0	0	0	0	0
Transportation	2.1%	0	0	44.9%	0	0	7.2%	0	0	0.6%	0	0	7.2%	0	0	0	0	0	0	0	0
Laborers	1.2%	0	0	65.7%	0	0	5.0%	0	0	0.3%	0	0	5.0%	0	0	0	0	0	0	0	0
TOTAL		0	2		1	1		1	1		0	0		0	0		12	4		0	0

HOW TO READ TOTAL WORK FORCE SECTION:

The information blocks in Section 1 (Total Work Force) identify the absolute number of the firm's employees. Each employee is listed in their respective ethnic/gender and employment category. The percentages listed under the heading of "CLFA Goals" are the County Labor Force Availability goals for each employment and ethnic/gender category.

Mgmt & Financial
Professional
A&E, Science, Computer
Technical
Sales
Administrative Support
Services
Crafts
Operative Workers
Transportation
Laborers

TOTAL EMPLOYEES			Female Goals
ALL	M	F	
7	8	1	35.9%
11	8	3	58.9%
0	0	0	19.7%
0	0	0	48.3%
0	0	0	44.1%
4	0	4	72.2%
0	0	0	60.3%
0	0	0	8.2%
0	0	0	37.5%
0	0	0	15.6%
0	0	0	10.7%

HOW TO READ EMPLOYMENT ANALYSIS SECTION:

The percentages listed in the goals column are calculated by multiplying the CLFA goals by the number of employees in that job category. The number in that column represents the percentage of each protected group that should be employed by the firm to meet the CLFA goal. A negative number will be shown in the discrepancy column for each underrepresented goal of at least 1.00 position.

II. EMPLOYMENT ANALYSIS

TOTAL

22 14 8

	Black			Hispanic			Asian			American Indian			Filipino			Female		
	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy
Mgmt & Financial	0.11	0	N/A	0.74	0	N/A	0.76	0	N/A	0.02	0	N/A	0.76	0	N/A	2.51	1	(1.51)
Professional	0.20	0	N/A	1.22	1	N/A	1.30	2	N/A	0.04	0	N/A	1.30	0	(1.30)	6.48	3	(3.48)
A&E, Science, Computer	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Technical	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Sales	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Administrative Support	0.09	2	1.91	0.93	1	N/A	0.47	0	N/A	0.02	0	N/A	0.47	0	N/A	2.89	4	1.11
Services	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Crafts	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Operative Workers	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Transportation	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Laborers	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00

Goals are set by job categories for each protected group. An underrepresentation is indicated by a negative number, but if the DISCREPANCY is less than -1.00 position, a N/A will be displayed to show there is no underrepresentation.

WORK FORCE ANALYSIS REPORT

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I. TOTAL WORK FORCE:

CLFA Goals	Black		CLFA Goals	Hispanic		CLFA Goals	Asian		CLFA Goals	American Indian		CLFA Goals	Filipino		White		Other	
	M	F		M	F		M	F		M	F		M	F	M	F	M	F
Mgmt & Financial	1.5%	0	0	10.6%	2	0	10.9%	6	3	0.3%	0	0	10.9%	0	3	13	0	0
Professional	1.8%	0	0	11.1%	2	0	11.8%	6	3	0.4%	0	0	11.8%	0	67	17	0	0
A&E, Science, Computer	1.4%	0	0	7.0%	0	0	25.5%	0	0	0.2%	0	0	25.5%	0	0	0	0	0
Technical	2.7%	0	0	15.7%	0	0	23.8%	0	0	0.3%	0	0	23.8%	0	0	0	0	0
Sales	1.3%	0	0	18.4%	0	0	12.1%	0	0	0.4%	0	0	12.1%	0	0	0	0	0
Administrative Support	2.2%	3	3	23.2%	2	7	11.8%	3	5	0.4%	0	0	11.8%	1	14	65	0	0
Services	1.3%	0	0	48.5%	0	0	11.4%	0	0	0.3%	0	0	11.4%	0	0	0	0	0
Crafts	1.2%	0	0	29.4%	0	0	15.5%	0	0	0.4%	0	0	15.5%	0	0	0	0	0
Operative Workers	0.7%	0	0	55.7%	0	0	21.3%	0	0	0.2%	0	0	21.3%	0	0	0	0	0
Transportation	2.1%	0	0	44.9%	0	0	7.2%	0	0	0.6%	0	0	7.2%	0	0	0	0	0
Laborers	1.2%	0	0	65.7%	0	0	5.0%	0	0	0.3%	0	0	5.0%	0	0	0	0	0
TOTAL	4	3		5	8		10	8		0	0		1	2	84	85	0	0

HOW TO READ TOTAL WORK FORCE SECTION:

The information blocks in Section 1 (Total Work Force) identify the absolute number of the firm's employees. Each employee is listed in their respective ethnic/gender and employment category. The percentages listed under the heading of "CLFA Goals" are the County Labor Force Availability goals for each employment and ethnic/gender category.

Mgmt & Financial
Professional
A&E, Science, Computer
Technical
Sales
Administrative Support
Services
Crafts
Operative Workers
Transportation
Laborers

TOTAL EMPLOYEES			Female Goals
ALL	M	F	
11	16	5	35.9%
95	75	20	58.9%
0	0	0	48.3%
0	0	0	44.1%
104	23	81	72.2%
0	0	0	60.3%
0	0	0	8.2%
0	0	0	37.5%
0	0	0	15.6%
0	0	0	10.7%

HOW TO READ EMPLOYMENT ANALYSIS SECTION:

The percentages listed in the goals column are calculated by multiplying the CLFA goals by the number of employees in that job category. The number in that column represents the percentage of each protected group that should be employed by the firm to meet the CLFA goal. A negative number will be shown in the discrepancy column for each underrepresented goal of at least 1.00 position.

II. EMPLOYMENT ANALYSIS

TOTAL

	Black			Hispanic			Asian			American Indian			Filipino			Female		
	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy
Mgmt & Financial	0.17	0	(1.71)	1.17	2	(8.55)	1.20	1	(1.20)	0.03	0	(0.03)	1.20	0	(1.20)	3.95	5	(1.05)
Professional	1.71	0	(1.71)	10.55	2	(8.55)	11.21	9	(2.21)	0.38	0	(0.38)	11.21	0	(11.21)	55.96	20	(35.96)
A&E, Science, Computer	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Technical	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Sales	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Administrative Support	2.29	6	3.71	24.13	9	(15.13)	12.27	8	(4.27)	0.42	0	(0.42)	12.27	2	(10.27)	75.09	81	5.91
Services	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Crafts	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Operative Workers	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Transportation	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Laborers	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00

Goals are set by job categories for each protected group. An underrepresentation is indicated by a negative number, but if the DISCREPANCY is less than -1.00 position, a N/A will be displayed to show there is no underrepresentation.

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE CITY ATTORNEY TO ENTER INTO A CONTRACT AMENDMENT FOR BOND COUNSEL AND DISCLOSURE COUNSEL SERVICES WITH STRADLING YOCCA CARLSON & RAUTH, A PROFESSIONAL CORPORATION, APPROVING AN AMENDMENT TO THE CONTRACT FOR FINANCIAL ADVISORY SERVICES WITH FIELDMAN, ROLAPP & ASSOCIATES AND AN AMENDMENT TO THE CONTRACT FOR SPECIAL TAX CONSULTING SERVICES AND ADMINISTRATION SERVICES WITH DAVID TAUSSIG & ASSOCIATES INC., WITH RESPECT TO THE ISSUANCE OF SPECIAL TAX BONDS FOR COMMUNITIES FACILITIES DISTRICT NO. 4 [BLACK MOUNTAIN RANCH VILLAGES].

WHEREAS, the firm of Fieldman, Rolapp & Associates was retained pursuant to an agreement for financial advisory services, dated November 17, 2000. This City Council action would extend the term of the agreement for an additional three years. Total compensation under this proposed amendment is not to exceed \$58,500. Total compensation under the agreement, including the amendment, is not to exceed \$110,000 for services and \$10,000 for expenses; and

WHEREAS, the firm of David Taussig & Associates, Inc., was retained pursuant to an agreement for Special Tax Consulting Services, January 19, 2001. This City Council action would extend the term of the agreement for an additional three years, covering special tax consulting and administration services associated with CFD No. 4. Total compensation under this proposed amendment is not to exceed \$35,000 for special tax consulting services and \$45,000 for administration services. Total compensation under the agreement and the amendment is not to exceed \$118,000 for services and \$10,000 for expenses; and

001900

WHEREAS, Stradling Yocca Carlson & Rauth was retained pursuant to an agreement for bond counsel and disclosure counsel services, dated April 16, 2001, as further amended on October 8, 2002. This City Council action would authorize the City Attorney's Office to extend the term of the agreement and provide for additional compensation. Total compensation under the agreement, including the amendment is not to exceed \$130,000, including expenses; and

WHEREAS, given the delays associated with the City's difficulty in accessing the bond markets, it is necessary and desirable that a Contract Amendment be authorized for bond and disclosure counsel, and contract amendments be executed for the financial advisor and the special tax consultant in connection with legal services, financial advisory services and special tax consulting services, provided with respect to the preparation of documents regarding the communities facilities district and the issuance of special tax bonds thereby; NOW

THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego as follows:

Section 1. That the Council authorizes the City Attorney to enter into a Contract Amendment for Bond and Disclosure Counsel Services with Stradling Yocca Carlson & Rauth with respect to bond counsel and disclosure counsel services rendered in connection with the issuance of bonds for Communities Facilities District No. 4 [Black Mountain Ranch Villages] in an amount not to exceed \$130,000; provided however that bond counsel shall be paid only from proceeds of the bonds and any deposits made by the developer therefor.

Section 2. That the Council authorizes the City to enter into an amendment to the Contract for Financial Advisory Services with Fieldman, Rolapp & Associates in connection with the issuance of bonds for Communities Facilities District No. 4 [Black Mountain Ranch

001901

Villages] in an amount not to exceed \$58,500, such amount to be paid as indicated in the

Executive Summary of the Mayor and on file with the City Clerk as Document No. _____.

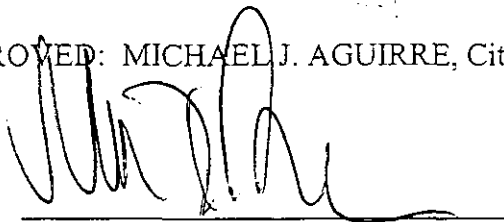
Section 3. That the Council authorizes the City to enter into an Amendment to the Contract for Special Tax Consulting Services and Administration Services with David Taussig & Associates in connection with the issuance of bonds for Communities Facilities District No. 4 [Black Mountain Ranch Villages] in an amount not to exceed \$80,000, such amount to be paid as indicated in the Executive Summary of the Mayor and on file with the City Clerk as Document No. _____.

Section 4. That a full reading of this ordinance is dispensed with prior to passage, since a written copy was made available to the City Council and the public prior to the day of its passage.

Section 5. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



Mark D. Blake
Chief Deputy City Attorney

MDB:lme
07/18/07
07/19/07.COR.Copy
Or.Dept:CA
O-2008-13

001902

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

**FIRST AMENDMENT TO THE AGREEMENT BETWEEN THE CITY OF
SAN DIEGO AND FIELDMAN, ROLAPP & ASSOCIATES**

THIS is the first amendment (the "First Amendment") to the agreement that was made and entered into on the 17th day of November, 2000, by and between the City of San Diego, a public entity (the "City"), and FIELDMAN, ROLAPP & ASSOCIATES (the "Financial Advisor"), a copy of which is on file in the office of the City Clerk, as Document number C-10435 (the "Agreement").

RECITALS

Whereas, the City desires to amend the Agreement for an additional three years for professional financial advisory services provided by the Financial Advisor in connection with Community Facilities District No. 4, Black Mountain Ranch Villages (the "District"); and,

Whereas, the extension of the term of the Agreement was contemplated in the original Agreement.

Now, therefore, in consideration of the mutual covenants and conditions hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Financial Advisor hereby agree to amend the Agreement as follows:

1. **Article III - COMPENSATION, of the Agreement is hereby amended to read:**

- A. **INVOICES**

1. The Financial Advisor shall submit detailed invoices to the City on a monthly basis for services performed.
 2. All invoices shall include the names and rates of pay for the Financial Advisor's personnel who have performed services on behalf of the City, the hours worked, and details of reasonable and necessary out-of-pocket expenses.

001904

B. COMPENSATION

1. Compensation for services rendered under this Agreement will be billed at the Financial Advisor's hourly rates, as detailed in Schedule 1, Schedule of Hourly Fees, below:

Schedule 1			
Schedule of Hourly Fees			
Executive Officer	\$ 300	Senior Associate	\$ 150
Principal	\$ 290	Associate	\$ 125
Principal/Senior Vice President	\$ 275	Analyst	\$ 85
Vice President	\$225	Administrative Assistance	\$ 65
Assistant Vice President	\$195	Clerical	\$ 35

2. In no event shall the total fees for services under this agreement exceed \$110,000.

C. EXPENSES

1. In addition to the fees specified on Section B above, the Financial Advisor shall be paid, at the time provided for payment of fees, their reasonable and necessary expenses. Those expenses shall include, but not be limited to, deliveries, photocopies, telephone calls, messenger services, travel, taxis, and meals incurred in connection with the services pertaining to this Agreement.

2. The Financial Advisor shall provide all documentation of reasonable and necessary expenses, including receipts for all items over \$100.00.

3. In no event shall the Financial Advisor be reimbursed for expenses in excess of \$10,000 pursuant to this Agreement.

D. PAYMENT

1. The City hereby agrees to pay all proper invoices for all services provided pursuant to this Agreement within at least thirty (30) calendar days from receipt.

2. All fees shall be based on hourly rates, and shall be due and payable monthly, within thirty (30) calendar days of billing.

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IN WITNESS WHEREOF, this First Amendment to the Agreement is executed by the City of San Diego and by the Special Tax Consultant.

THE CITY OF SAN DIEGO

By: _____
Purchasing & Contracting

Date: _____

FIELDMAN, ROLAPP & ASSOCIATES

By: _____
James V. Fabian
Principal

Date: _____

I HEREBY APPROVE the form and legality of the foregoing First Amendment to the Agreement this _____ Day of _____, 2007.

MICHAEL J. AGUIRRE, City Attorney

By: _____
Mark D. Blake
Chief Deputy City Attorney

001907

**FIRST AMENDMENT TO THE AGREEMENT BETWEEN THE CITY OF
SAN DIEGO AND DAVID TAUSSIG & ASSOCIATES, INC.**

THIS is the first amendment (the "First Amendment") to the agreement that was made and entered into on the 19th day of January, 2001, by and between the City of San Diego, a public entity (the "City"), and DAVID TAUSSIG & ASSOCIATES, INC. (the "Special Tax Consultant"), a copy of which is on file in the office of the City Clerk, as Document number C-10573 (the "Agreement").

RECITALS

Whereas, the City desires to amend the Agreement for an additional three years for special tax consulting services provided by the Special Tax Consultant in connection with Community Facilities District No. 4, Black Mountain Ranch Villages (the "District"); and,

Whereas, the extension of the term of the Agreement was contemplated in the original Agreement; and,

Whereas, the City desires to also amend the Agreement to provide for the addition of special tax administration services provided by the Special Tax Consultant in connection with the District; and,

Whereas, the Agreement provides for additional consultant services not specifically identified in the Agreement, provided that any additional services and compensation shall be subject to the mutual written agreement of the City and Special Tax Consultant.

Now, therefore, in consideration of the mutual covenants and conditions hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Special Tax Consultant hereby agree to amend the Agreement as follows:

1. **Article I – SCOPE OF SERVICES, of the Agreement is hereby amended by adding Section C., SPECIFIC SERVICES – SPECIAL TAX ADMINISTRATION SERVICES, to read:**

C. SPECIFIC SERVICES – SPECIAL TAX ADMINISTRATION SERVICES

1. Subdivision Research: As necessary, identify and obtain copies of final tract or parcel maps for CFD No. 4. Determine acreage for each parcel.

2. Development Research: Research building permit issuance for each fiscal year. Identify building permit issuance date, tract, and lot for each new building. Review current Assessor's Parcel maps to determine which parcel numbers will be valid for each fiscal year.

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3. Database Management: Create automated parcel database to include all parcels. Data items will include Assessor's Parcel Number, corresponding tract and lot number, acreage, building square footage, and building permit issuance date.

4. Exempt Property: Identify all property owned by public agencies or entities otherwise exempt from the special tax and classify as exempt property.

5. Taxable Property: Identify all taxable properties and classify each as "Developed Property" or "Undeveloped Property." Assign each "Developed Property" to the appropriate special tax class.

6. Determine Special Tax Requirement: Assist Client with the preparation of an administrative expense budget. Confirm interest and principal payments. Determine any other charges or credits to tax levy.

7. Special Tax Rates: Based on tax classifications and special tax requirement, compute the special tax rates for fiscal years 2007-08, 2008-09, and 2009-10 for all classifications of taxable property.

8. Special Tax Report: Prepare the Annual Special Tax Report for CFD No. 4 in a format that can be used as the exhibit to the resolution authorizing the levy and collection of special taxes for fiscal years 2007-08, 2008-09, and 2009-10.

9. Special Tax Levy: Assist with submitting the special tax levy on or before August 10, of each year, or such other date specified by the County of San Diego, to the Auditor-Controller for inclusion on the consolidated property tax bills for fiscal years 2007-08, 2008-09, and 2009-10. The special tax levy will be submitted on magnetic tape or other media as specified by the County.

10. Meetings: Attend the City Council meeting each fiscal year at which the resolution authorizing the levy and collection of special taxes is scheduled for adoption.

11. Disclosure: Assist in preparation of information related to the following annual disclosure requirements:

a. California Debt and Investment Advisory Commission Mello-Roos Yearly Fiscal Status Reports, pursuant to Section 53359.5 of the California Government Code.

b. Special tax disclosure documents for resale properties pursuant to Section 1102.6b of the Civil Code and Section 53340.2 of the Government Code.

c. Material required by the Issuer Continuing Disclosure Certificate.

2. Article III, Section B, COMPENSATION, of the Agreement is hereby amended to read:

B. COMPENSATION

1. Compensation for services rendered under this Agreement will be billed at the Special Tax Consultant's hourly rates, as detailed in Schedule 1, Schedule of Hourly Fees, below:

Schedule 1			
Schedule of Hourly Fees			
President	\$200	Senior Associate	\$150
Senior Vice President	\$190	Associate I/II	\$130
Vice President	\$190	Senior Analyst	\$120
Director	\$180	Analyst	\$115
Manager	\$170	Research Assistant	\$ 90
Senior Engineer	\$150		

2. In no event shall the total fees for services under Article I, Section B. of this agreement exceed \$73,000, nor shall total fees for services under Article I, Section C. of this agreement exceed \$45,000.

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IN WITNESS WHEREOF, this First Amendment to the Agreement is executed by the City of San Diego and by the Special Tax Consultant.

THE CITY OF SAN DIEGO

By: _____
Purchasing & Contracting

Date: _____

FIELDMAN, ROLAPP & ASSOCIATES

By: _____
James V. Fabian
Principal

Date: _____

I HEREBY APPROVE the form and legality of the foregoing First Amendment to the Agreement this _____ Day of _____, 2007..

MICHAEL J. AGUIRRE, City Attorney

By: _____
Mark D. Blake
Chief Deputy City Attorney

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COPY

AGREEMENT BETWEEN THE CITY OF SAN DIEGO

AND

DAVID TAUSSIG & ASSOCIATES, INC.

COMMUNITY FACILITIES DISTRICT NO. 4
(BLACK MOUNTAIN RANCH VILLAGES)

Dated: _____

Document No. _____

DOCUMENT NO. C-10573
FILED JAN 19 2001
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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**AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND
DAVID TAUSSIG & ASSOCIATES, INC
Community Facilities District No. 4 (Black Mountain Ranch Villages)**

THIS AGREEMENT is made and entered into this 19th day of Jan, 2000¹ by and between the City of San Diego, a public entity having its principal offices at 202 "C" Street, San Diego, CA 92101 (hereinafter called the "City") and David Taussig & Associates, Inc. having its principal offices at 1301 Dove Street, Suite 600, Newport Beach, CA 92660 (hereinafter called "Special Tax Consultant").

RECITALS

WHEREAS, the City is contemplating the formation of Community Facilities District No. 4 (Black Mountain Ranch Villages) (the "District") in order to finance public infrastructure improvements (the "Project") related to the District; and,

WHEREAS, the City desires to retain the services of a professional special tax consultant to prepare a fair and equitable Rate and Method of Apportionment (the "RMA") in accordance with the City's policies and procedures, as more fully described in the "Scope of Services"; and,

WHEREAS, the City desires independent evaluation services in connection with the proposed Project financing, including iterative special tax analysis related to the district formation and the development of recommendations on bond covenants that protect the interests of the City and eventual bondholders; and,

WHEREAS, the Special Tax Consultant represents it is well qualified to provide professional special tax consultant services to public entities and the City.

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assessed valuation for each parcel.

2. Prepare an initial spread of special tax focusing on an equitable apportionment.

Provide analysis and recommendations on optimal measurements for developing an equitable tax spread (i.e., average daily trips, square footage, acreage, etc.). Develop up to fourteen (14) modified iterations of the initial tax spread as may be requested by the City pursuant to discussions with its consultants and/or the developer. Develop a final tax spread for the RMA that is appropriate for the District and that adheres to each of the following:

- (a) the City Council's Policy on Public Infrastructure Financing Assessment Districts and Community Facilities (Policy Number 800-03);
- (b) City staff and consultant information (i.e., Real Estate Appraisal and Market Absorption Study);
- (c) the forecasted timeline for the Project's development and absorption; and,
- (d) bond marketing considerations.

3. Calculate the special tax value-to-lien and the total lien for each parcel within the District. Utilize this information to assist the City in evaluating the proposed special tax for conformance with the City's policy not to levy special assessments or taxes if a property owners total property tax bill would exceed two percent (2%) of the property's assessed value.

4. Calculate special tax rates that will adequately support the Project. Estimate the annual special and total property taxes as a percentage of the anticipated improved property values. Prepare a preliminary proforma for the District's revenues and expenses.

5. Design the special tax formula to adapt to changes in land use, densities, and Project absorption. Evaluate the need for improvement areas or zones and, if required, develop separate special tax formulas for each improvement area or zone.

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13. Testify on behalf of the City at the requisite Public Hearing and/or other public meetings as is deemed necessary by the City.
14. Coordinate with the Underwriter and City staff regarding the final structure of debt service and a bond issuance schedule.
15. Coordinate with the Bond Counsel on development of a controlled bond proceeds release program.
16. Prepare and execute a Special Tax Consultant Certificate confirming the adequacy of special taxes to meet debt service requirements for the first series of bonds to be issued. If necessary, request that each Project property owner provide an executed Certification of Landowner Information Form confirming net taxable acreage and other relevant data provided by each Project property owner prior to executing the Special Tax Consultant Certificate.
Prepare the tax statement for the Registrar of Voters to comply with Section 5301 of the State Election Code.
17. Review the boundary map.
18. Prepare a customized homeowner disclosure form, as required by law, to be signed by the home buyer prior to the close of escrow, that at a minimum discloses:
 - (a) the annual amount of the maximum special tax; and,
 - (b) the special tax rates levied on developed and undeveloped properties.
19. Answer questions and provide technical advice to the City and its consultants related to the proposed financing, the special tax spread, and the rationale for the RMA. Provide general assistance and be accessible (by phone and in person) throughout the financing process described in this Scope of Services.

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for the Series A bond issue exceed thirty-eight thousand dollars (\$38,000).

Schedule 2	
Par Value of the Bonds	Fees
Less than \$2,000,000	\$25,000
\$2,000,001 to \$5,000,000	\$25,000 + .0020 of amount over \$2,000,000
\$5,000,001 to \$10,000,000	\$31,000 + .0014 of amount over \$5,000,000

3. In the event it is determined that the par value of the Series A bonds will be greater than ten million dollars (\$10,000,000), it is the intent of the City and the Special Tax Consultant to amend this Agreement to provide compensation based on the following formula for all services rendered in support of the Series A bond issue:

$$\$38,000 + (.0006) * (\text{amount of bond issue over } \$10,000,000).$$

4. Total fees paid to the Special Tax Consultant for the Series B bonds shall not exceed twenty-five thousand dollars (\$25,000). Services and compensation in support of the Series B bond issue are contingent upon the deposit of additional monies by the Project developer for this purpose.

5. Pursuant to this Agreement, the total fees paid to the Special Tax Consultant for services rendered in support of the Series A and Series B bond issues shall not exceed sixty-three thousand dollars (\$63,000).

C. EXPENSES

1. In addition to the fees specified on Section B above, the Special Tax Consultant shall be paid, at the time provided for payment of fees, their reasonable and necessary expenses. Those expenses shall include, but not be limited to, deliveries, photocopies, telephone calls, messenger services, travel, taxis, and meals incurred in connection with the services pertaining to

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any employee of the Special Tax Consultant, or its agent(s), at the sole discretion of the City. To the extent permitted by law, confidentiality of information supplied to or produced by the Special Tax Consultant for the City shall be guaranteed by the Special Tax Consultant upon the request of the City. The Special Tax Consultant warrants and guarantees that it shall not use any information provided to it by the City for the benefit of any existing or future clients.

ARTICLE V - EFFECTIVE DATE AND TERM

This Agreement shall be effective as of the date the Special Tax Consultant first provided consultant services to the City on this Project and continue until completion of the Scope of Services, or upon written notice of cancellation, but in no event shall it exceed five (5) years. This Agreement may be extended at the mutual written consent of the Special Tax Consultant and the City.

ARTICLE VI - CONFIDENTIALITY, RECORDS, AND DOCUMENTS

A. CONFIDENTIALITY OF WORK

1. All work performed by the Special Tax Consultant, including, but not limited to all drafts, data, correspondence, proposals, reports, and estimates compiled or composed by the Special Tax Consultant pursuant to this Agreement is for the sole use of the City and shall be confidential and not released to, or used for the benefit of, any third party without the prior written consent of the City.
2. In the event the Special Tax Consultant fails to maintain the confidentiality of such information or use such information for its own economic gain, the Special Tax Consultant may be prohibited from bidding on future contracts with the City for a period of four (4) years.
3. This provision does not apply to information that:
 - (a) was publicly known, or otherwise known to the Special Tax Consultant, at the

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(a) by the completion of the Project; or

(b) in accordance with other provisions of this Agreement.

4. Notwithstanding any other provision of this Agreement, the Special Tax Consultant shall have the right to make copies of all such documents.

ARTICLE VII - TERMINATION

A. NOTICE

1. This Agreement may be terminated by either party on thirty (30) calendar days prior written notice to the other party at the address specified herein.

2. Upon receipt of such prior written notice from the City, the Special Tax Consultant shall immediately cease work on any and all City matters, unless otherwise directed in writing by the City.

B. TRANSMISSION OF DOCUMENTS AND COMPENSATION

1. The Special Tax Consultant agrees to transmit to the City any and all materials prepared, developed or obtained under the Agreement in the Special Tax Consultant's possession within at least thirty (30) calendar days of receipt of written notice of termination.

2. If Phase I of this Agreement is not completed, the Special Tax Consultant will be compensated at a rate equal to the hourly rates specified in Schedule 1 of Article III, Section B, subject to a minimum charge of \$3,500. In such event, the Special Tax Consultant may be reimbursed for reasonable and necessary expenses in accordance with Section D of Article III.

3. If Phase II of this Agreement is not completed, the Special Tax Consultant may bill the City at the hourly rates as specified in Schedule 1 of Article III, Section B, plus reimbursement for reasonable and necessary expenses in accordance with Section E of Article III.

and shall not limit the City's rights under any other provision of this Agreement, or otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to the City against the Special Tax Consultant.

ARTICLE VIII - PROFESSIONAL SERVICE CONTRACT AND KEY PERSONNEL

A. PROFESSIONAL SERVICE CONTRACT

1. The City's Financing Services Division is the contract administrator for this Agreement. The Special Tax Consultant shall work solely under the direction of the Financing Services Division.

2. Because this Agreement is made and entered into by the City in reliance upon the qualifications, experience, and personnel identified as the project team of consultants, the Special Tax Consultant shall not assign or hypothecate this Agreement without first obtaining the written approval of the City.

B. KEY PERSONNEL

1. The Special Tax Consultant agrees that David Taussig shall be the primary contact and project manager for the engagement. Mr. Taussig shall coordinate the Special Tax Consultant's activities for the engagement and shall participate in all phases of the engagement

2. The Special Tax Consultant shall submit in writing to the City, prior to assignment, the name, position description, resume, and duration of assignment for each key professional employee to be designated to any project on a regular basis for more than three (3) months, other than David Taussig, Shayne Morgan, Andrea Roess, Mitch Mosesman, and Marjorie Knitter.

(a) The Special Tax Consultant shall not remove, prior to the completion of the

govern and control the terms and conditions of this Agreement.

ARTICLE XII - ACCEPTABILITY OF WORK

The City shall decide any and all questions which may arise as to the quality or acceptability of the services performed and the manner of performance, the interpretation of instructions to the Special Tax Consultant, the acceptable completion of this Agreement, and the amount of compensation due. This clause is not intended and shall not be interpreted to allow the City to interfere with or to influence the independence of the Special Tax Consultant's results or their reports, but instead is designed to assure the subsequent completion of the obligations required herein. In the event the Special Tax Consultant believes that any requirement of the City interferes with or affects the independence of the Special Tax Consultant, the Special Tax Consultant shall confer with the City in order to resolve any possible conflict. In the event the Special Tax Consultant and the City cannot agree as to the quality or acceptability of the work, the manner of performance and/or the compensation payable to the Special Tax Consultant in this Agreement, the City or the Special Tax Consultant shall give to the other written notice thereof. Within at least ten (10) calendar days thereafter, the Special Tax Consultant and the City shall each prepare a written report which supports its position and file the same with the City and the other party. Thereafter, the City shall, with reasonable diligence, determine the quality or acceptability of the work, the manner of performance, and/or the compensation payable to the Special Tax Consultant.

ARTICLE XIII - INDEMNIFICATION

A. INDEMNIFICATION FOR PROFESSIONAL SERVICES

The Special Tax Consultant agrees to defend, indemnify, protect, and hold the City, and all of its officers, agents, and employees harmless from any and all actions, suits, proceedings,

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occurrence, subject to an annual aggregate of one million dollars (\$1,000,000) for general liability, completed operations, and personal injury, other than bodily injury;

(b) workers' compensation insurance for all of Special Tax Consultant's employees who are subject to this Agreement, to the extent required by the State of California, providing coverage for combined single limit of at least one million dollars (\$1,000,000) per occurrence;

(c) automobile insurance for all of the Special Tax Consultant's automobiles, including owned, hired, and non-owned automobiles, automobile insurance for bodily injury, and property damage providing coverage to a combined single limit of one million dollars (\$1,000,000) per occurrence.

(d) professional liability insurance of at least one million dollars (\$1,000,000) to protect the City from all liability, claims, costs, and damages caused directly or indirectly from the negligence, acts, errors, or omissions of the Special Tax Consultant or its employees, agents, subconsultants or officers.

B. LICENSED INSURANCE COMPANIES

1. All insurance required by express provision of this Agreement shall be carried only in responsible insurance companies that have been given an "A" rating by AM Best, licensed to do business in the State of California and that have been approved by the City.

2. The policies required under Article XIV, Section A, Paragraph 2, shall expressly provide that:

(a) the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives;

(b) the policies are primary and contributing to any insurance that may be carried by the City; and

ARTICLE XVII - NOTICES

In all cases where written notice is to be given under this Agreement, service shall be deemed sufficient if said notice is deposited in the United States mail, postage paid. When so given, such notice shall be effective from the date of mailing of the same. For the purpose hereof, unless otherwise provided by notice in writing from the respective parties, notice to the City shall be addressed to Financing Services Deputy Director, City of San Diego, 202 "C" Street, MS-7B, San Diego, California 92101. Notice to the Special Tax Consultant shall be addressed to David Taussig, President, David Taussig & Associates, Inc., 1301 Dove Street, Suite 600, Newport Beach, California 92660. Nothing herein contained shall preclude or render inoperative service or such notice in the manner provided by law.

ARTICLE XVIII - EQUAL EMPLOYMENT OPPORTUNITY

A. NON-DISCRIMINATION REQUIREMENTS

1. **Compliance with the City's Equal Opportunity Contracting Program.** The Special Tax Consultant and each of its Subconsultants shall comply with the City's Equal Opportunity Contracting Program Consultant Requirements which is attached hereto as Exhibit A and incorporated herein by this reference.

2. **Non-Discrimination Ordinance.** The Special Tax Consultant shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subconsultants, vendors or suppliers. The Special Tax Consultant shall provide equal opportunity for Subconsultants to participate in subconsulting opportunities. The Special Tax Consultant understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions. This language shall be in contracts between the Special Tax Consultant and any Subconsultants, vendors and suppliers.

Agreement, and/or suspension from participating in future City contracts as a prime or subconsultant, for a period of not less than one (1) year. For additional or subsequent violations, the period of suspension may be extended for a period of up to three years. Failure to satisfy penalties imposed pursuant to this section shall prohibit the Special Tax Consultant from participating in future City contracts until all penalties have been satisfied.

ARTICLE XIX - DRUG-FREE WORKPLACE

The Special Tax Consultant agrees to comply with the City's Drug Free Workplace requirements. Every person or organization awarded a contract by the City of San Diego for the provision of services shall certify to the City that it will provide a drug-free workplace by submitting a Consultant Certification for a Drug-Free Workplace form [Exhibit A(7)]. Any subcontract entered into by the Special Tax Consultant pursuant to this Agreement shall contain this provision.

ARTICLE XX - AMERICANS WITH DISABILITIES ACT

Every person or organization awarded a contract, lease, or grant by the City of San Diego acknowledges and agrees that it is aware of and will comply with Council Policy 100-04, adopted by Resolution No. 282153 relating to the federally-mandated American with Disabilities Act (ADA). Contractors and subcontractors will be individually responsible for their own ADA program.

ARTICLE XXI - EMPLOYMENT OF CITY STAFF

This Agreement may be unilaterally and immediately terminated by the City if any member of the Special Tax Consultant employs an individual, who, within twelve (12) months immediately preceding such employment did, in the individual's capacity as a City officer or employee, participate in, negotiate with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the Special Tax Consultant for this

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G. NON-ASSIGNMENT

The Special Tax Consultant shall not assign the obligations under this Agreement, nor any monies due or to become due, without the City's prior written approval. Any assignment in violation of this paragraph shall constitute a default and is grounds for immediate termination of this Agreement, at the sole discretion of the City.

H. COUNTERPARTS

This Agreement may be executed in counterparts, which when taken together shall constitute a single, signed original as though all parties had executed the same page.

EQUAL OPPORTUNITY CONTRACTING PROGRAM [EOCP]
CONSULTANT REQUIREMENTS

CONTENTS:

- A. City's Equal Opportunity Commitment
 - B. Equal Opportunity Agreement
 - C. Consultant Work Force
 - D. Equal Employment Opportunity Plan
 - E. Listing of Subconsultants
 - F. Subconsultant Participation Level
 - G. Definitions
 - H. Certification
 - I. Contract Activity Reports
- A. The City of San Diego is strongly committed to equal opportunity in solicitation of professional service consultants. The City encourages prime consultants to share this commitment. Prime consultants are encouraged to take positive steps to diversify and expand their subconsultant solicitation base and to offer consulting opportunities to all eligible subconsultants.
Consultant shall comply with requirements of San Diego Ordinance No. 18173, Section 27.2701 through 22.2708, Equal Employment Opportunity Outreach Program [see Attachment 1].
- B. All proposers shall sign, submit with proposal package, and agree to be bound by the *Equal Opportunity Agreement* [see Attachment 2].
- C. Consultant Work Force
- 1. Prior to award of contract, successful proposer must submit to the City's EOCP office a *Work Force Report* [see Attachment 3] or an *Equal Employment Opportunity [EEO] Plan*.
 - 2. If under representations are noted in the *Work Force Report* when compared to County Labor Force Availability data, Consultant will be requested by EOCP staff to submit an *Equal Employment Opportunity Plan*.
- D. An acceptable *Equal Employment Opportunity Plan* must include at least the following assurances that:
- 1. The Consultant will maintain a working environment free of discrimination, harassment, intimidation and coercion at all sites and in all facilities at which the contractor's employees are assigned to work;
 - 2. A responsible official is designated to monitor all employment related activity to ensure the company EEO Policy is being carried out and to submit reports relating to EEO provisions;
 - 3. The Consultant disseminates and reviews its EEO Policy with all employees at least once a year, posts the policy statement and EEO posters on all company bulletin boards and job sites, and documents every dissemination, review and posting with a written record to identify the time, place, employees present, subject matter, and disposition of meetings;
 - 4. The Consultant reviews, at least annually, all supervisors' adherence to and performance under the EEO Policy and maintains written documentation of these reviews;

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2. Subconsultants and vendors must be named on the *Subconsultants List* if they receive more than \$10,000 or more than one-half of one percent [.5%], whichever amount is less.
3. Proposer shall also submit subconsultant commitment letters on subconsultant letterhead, no more than one page each, from all proposed subconsultants to acknowledge their commitment to the team, Scope of Services, and percent of participation in the project.

F. Subconsultant Participation Level

1. Projects valued at \$25,000 or more have a voluntary subconsultant participation level goal of 15%. Goals are achieved by contracting with any combination of Minority Business Enterprise [MBE], Women Business Enterprise [WBE], Disadvantaged Business Enterprise [DBE], Disabled Veteran Business Enterprise [DVBE], or Other Business Enterprise [OBE] level.
2. Attainment of the 15% subconsultant participation level goal is strongly encouraged but strictly voluntary.
3. If the subcontractor participation level goal of 15% is not achieved, proposer is required to complete an *Outreach and Teaming Survey* [see Attachment 5] and submit it to:

City of San Diego Equal Opportunity Contracting Program [EOCP]
1010 Second Avenue, Fifth Floor
San Diego, CA 92101

Phone (619) 533-4464 Fax (619) 533-4474

The *Outreach and Teaming Survey* is due to EOCP five working days from date of notification of selection and must be received prior to award of contract. Survey information will be used by EOCP staff to assist consultants with achieving subconsultant participation level goals on future City contracts.

G. Definitions

1. Certified "**Minority Business Enterprise**" [MBE] means a business which is at least fifty-one percent [51%] owned by African Americans, American Indians, Asians, Filipinos, and/or Latinos and whose management and daily operation is controlled by one or more members of the identified ethnic groups. In the case of a publicly-owned business, at least fifty-one percent [51%] of the stock must be owned by, and the business operated by, one or more members of the identified ethnic groups.
2. Certified "**Women Business Enterprise**" [WBE] means a business which is at least fifty-one percent [51%] owned by one or more women and whose management and daily operation is controlled by the qualifying party(ies). In the case of a publicly-owned business, at least fifty-one percent [51%] of the stock must be owned by, and the business operated by, one or more women.
3. Certified "**Disadvantaged Business Enterprise**" [DBE] means a business which is at least fifty-one percent [51%] owned and operated by one or more socially and economically disadvantaged individuals and whose management and daily operation is controlled by the qualifying party(ies). In the case of a publicly-owned business, at least fifty-one percent [51%] of the stock must be owned by, and the business operated by, socially and economically disadvantaged individuals.
4. Certified "**Disabled Veteran Business Enterprise**" [DVBE] means a business which is at least fifty-one percent [51%] owned by one or more veterans with a service related disability and whose management and daily operation is

DIVISION 27
EEO-1 EMPLOYMENT OPPORTUNITY
001 OUTREACH PROGRAM

§ 22.2701 Purpose and Intent

The overall objective of the City's Equal Employment Opportunity ("EEO") Program is to ensure that contractors doing business with or receiving funds from the City will not engage in unlawful discriminatory employment practices prohibited by State or Federal law. Such employment practices include, but are not limited to, the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay, or other forms of compensation, and selection for training, including apprenticeship.

§ 22.2702 Definitions

Unless stated otherwise, the following definitions apply to this Division:

"City" means The City of San Diego and those agencies, boards, commissions and corporations authorized to act on behalf of, or as an agent for, the City of San Diego.

"Contract" means an agreement to provide labor, materials, supplies or services in the performance of a contract, franchise, concession or lease granted, let or awarded by or on behalf of the City.

"Contractor" means any person, firm, partnership, corporation, or combination thereof, who is selected to enter into, or actually enters into a contract with department heads and officers empowered by law to enter into contracts on behalf of the City for public works or improvements to be performed, or for a franchise, concession or lease of property, or for goods, services or supplies to be purchased, at the expense of the City or to be paid out of moneys deposited in the treasury or out of trust moneys under the control of, or collected by, the City.

"Equal Employment Opportunity Plan" means a document prepared by a contractor in accordance with a form and format supplied by the City which describes the contractor's plan of action.

"Gender" means the character of being male or female.

"Program Manager" means the Program Manager for the City's Equal Opportunity Contracting Program or his or her designee.

"Work Force Analysis" means a comparison of a contractor's Work Force Report with applicable County Labor Force Availability data.

"Work Force Report" means a report, in a format supplied by the City but compiled by the contractor, of the contractor's total work force which indicates the number of males and females in each identified ethnic group by occupational category.

§ 22.2703 Scope

Except as provided in Section 22.2704, this Division applies to all contractors except:

(a) Contractors and subcontractors who do less than a total of \$10,000 worth of business with the City during the preceding twelve (12) months or who have less than a total of fifteen (15) employees, except that contractors exempted by this Subsection shall be subject to audits pursuant to Section 22.2707 to determine if unlawful discriminatory employment practices are occurring.

(b) Contracts to which any city (other than The City of San Diego), county, district or other political subdivision, or any joint powers authority created under authority of law, or other public entity, or any other group or combination of the foregoing acting as a unit, is a party.

(c) Nonprofit charitable, educational, or religious associations or corporations, as evidenced by records on file with the City to be compiled for purposes of this Division in accordance with procedures established by the City Manager.

(d) Emergency contracts, if a written partial or full waiver is granted by the City Manager except that contractors exempted by this Subsection shall be subject to audits pursuant to Section 22.2707 to determine if unlawful discriminatory employment practices are occurring. The City Manager may grant a partial or full waiver from the requirements of this Division for an emergency contract only to the limited extent necessary in order to expedite the award of such contract. For purposes of this Section, the term "emergency" has the same meaning as in San Diego City Charter, Section 94.

§ 22.2704 Mandatory Nondiscrimination Contract Clause

Notwithstanding the provisions of Section 22.2703, every contract shall contain a nondiscrimination clause which shall read as follows:

Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Prime contractors shall ensure that their subcontractors comply with this Program. Nothing in this Section shall be interpreted to hold a prime contractor liable for any discriminatory practice of its subcontractors.

§ 22.2705 Duty to Submit Reports

(a) If a contract is competitively solicited, after the lowest responsible bidder has been determined and prior to the execution of the contract, the apparent low bidder shall submit to the Equal Opportunity

Contracting Program a Work Force Report, on a City form, or an Equal Employment Opportunity Plan approved by the Program Manager.

If a contract is not competitively solicited, the contractor shall submit to the Equal Opportunity Contracting Program a Work Force Report or an Equal Employment Opportunity Plan approved by the Program Manager prior to tendering the signed contract documents to the City for signature.

(b) Staff will conduct a work force analysis on all Work Force Report submittals to determine whether or not an Equal Employment Opportunity Plan is required. If an Equal Employment Opportunity Plan is required, the contractor will submit a Plan for approval by the Program Manager.

(c) Any Equal Employment Opportunity Plan approved by the City shall not include quotas, goals or timetables for increasing women and minority employment and will not require terminating or laying off existing employees.

(d) If the apparent low bidder or contractor does not submit either a Work Force Report or Equal Employment Opportunity Plan as required by this Section, for purposes of awarding the contract only, the City Manager will ensure an administrative hearing is conducted by an independent hearing officer to determine if the contract should be awarded in accordance with City, State, and Federal law.

§ 22.2706 Duty to Comply with Equal Employment Opportunity Plan

A contractor for whom an Equal Employment Opportunity Plan has been approved by the City shall use best efforts to comply with that Equal Employment Opportunity Plan.

§ 22.2707 Reviews

(a) The Program Manager shall conduct periodic reviews of contractors to ensure that unlawful discrimination is not being practiced and Equal Employment Opportunity Plans are implemented.

(b) If the City Manager determines, after review, that the contractor has not implemented their Equal Employment Opportunity Plan and/or practices unlawful discrimination and corrective action has not occurred by the contractor after sufficient notice, the City Manager may recommend termination of the contract and debarment to the City Council.



THE CITY OF SAN DIEGO

ATTACHMENT (3)

EQUAL OPPORTUNITY CONTRACTING PROGRAM

1010 SECOND AVENUE • SUITE 500 • SAN DIEGO, CA 92101

(619) 533-4464 • FAX: 533-4474

WORK FORCE REPORT

The objective of the Equal Employment Opportunity Program is to ensure that contractors doing business with the City, or receiving funds from the City, will not engage in unlawful discriminatory employment practices prohibited by State and Federal law. Such employment practices include, but are not limited to the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship.

NO OTHER FORMS WILL BE ACCEPTED

CONTRACTOR IDENTIFICATION

Type of Contractor: ☐ Construction ☐ Vendor/Supplier ☐ Financial Institution ☐ Lessee/Lessor
☐ Consultant ☐ Grant Recipient ☐ Insurance Company ☐ Other

Name of Company: _____

AKA/DBA: _____

Address (Corporate Headquarters, where applicable): _____

City _____ County _____ State _____ Zip _____

Telephone Number: () _____ FAX Number: () _____

Name of Company CEO: _____

Address(es), phone and fax number(s) of company facilities located in San Diego County (if different from above):

Address: _____

City _____ County _____ State _____ Zip _____

Telephone Number: () _____ FAX Number: () _____

Type of Business: _____ Type of License: _____

The Company has appointed: _____

as its Equal Employment Opportunity Officer (EEOO). The EEOO has been given authority to establish, disseminate, and enforce equal employment and affirmative action policies of this company. The EEOO may be contacted at:

Address: _____

Telephone Number: () _____ FAX Number: () _____

For Firm's: ☐ San Diego Work Force and/or ☐ Managing Office Work Force

I, the undersigned representative of

(Firm Name)

(County)

(State)

hereby certify that information provided herein is true and correct. This document was executed on this day of

_____, 19____.

(Authorized Signature)

(Print Authorized Signature Name)

INFORMATION REGARDING SUBCONSULTANTS PARTICIPATION:

Proposal shall include name and complete address of all Subconsultants who will receive more than one-half of one percent (0.5%) of the contract amount or in excess of \$10,000.

Subconsultants shall be used for Scope of Services listed. No changes to this Subconsultants List will be allowed without prior written City approval.

Proposer shall also submit subconsultant commitment letters on subconsultant letterhead, no more than one page each, from subconsultants listed below to acknowledge their commitment to the team, Scope of Services, and percent of participation in the project.

NAME AND ADDRESS SUBCONSULTANTS AND VENDORS	SCOPE OF WORK	PERCENT OF CONTRACT	DOLLAR AMOUNT OF CONTRACT	① MBE/ WBE/DBE/ DVBE/OBE	② WHERE CERTIFIED

① For information only. As appropriate, Proposer shall identify Subconsultants as:

Certified Minority Business Enterprise	MBE
Certified Woman Business Enterprise	WBE
Certified Disadvantaged Business Enterprise	DBE
Certified Disabled Veteran Business Enterprise	DVBE
Other Business Enterprise	OBE

② For information only. As appropriate, Proposer shall indicate if Subconsultant is certified by:

City of San Diego	CITY
State of California Department of Transportation	CALTRANS
San Diego Joint Agencies Contracting Opportunity Task Force	JACO

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This survey will be submitted as part of the contract award evaluation package to the San Diego City Council. Failure to complete, sign and submit this form or a facsimile within the five (5) day period after date of notification may result in a loss of the contract based upon non-responsiveness.

As an authorized officer of this company, I certify that information contained in this report is true and accurate to the best of my knowledge.

Company Name

Name

Title

Signature

Date

****FOR OFFICIAL USE****
(To Be Completed By City Staff Only)

Total: \$ _____ M/W/DBE: \$ _____ % DVBE: \$ _____ % OBE: \$ _____ %

CONSULTANT CERTIFICATION FOR A DRUG-FREE WORKPLACEPROJECT TITLE: _____

I hereby certify that I am familiar with the requirement of San Diego City Council Policy No. 100-17 regarding Drug-Free Workplace as outlined in the request for proposals, and that:

Name under which business is conducted

has in place a drug-free workplace program that complies with said policy. I further certify that each subcontract agreement for this project contains language which indicates the Subconsultants agreement to abide by the provisions of Section 4.9.1 subdivisions A through C of the policy as outlined.

Signed _____

Printed Name _____

Title _____

Date _____

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AGREEMENT BETWEEN THE CITY OF SAN DIEGO

AND

FIELDMAN, ROLAPP & ASSOCIATES

**COMMUNITY FACILITIES DISTRICT NO. 4
(BLACK MOUNTAIN RANCH VILLAGES)**

Dated: _____

Document No. _____

DOCUMENT NO. C-10435
FILED NOV 17 2000
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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**AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND
FIELDMAN, ROLAPP & ASSOCIATES
Community Facilities District No. 4(Black Mountain Ranch Villages)**

THIS AGREEMENT is made and entered into this 17 day of November 2000 by and between the City of San Diego, a public entity having its principal offices at 202 "C" Street, San Diego, CA 92101 (hereinafter called the "City") and FIELDMAN, ROLAPP & ASSOCIATES, having its principal offices at 2100 Main Street, Suite 210, Irvine, CA 92614, San Francisco, CA 94104 (hereinafter called "Financial Advisor").

RECITALS

WHEREAS, the City is contemplating the formation of Community Facilities District No. 4 (Black Mountain Ranch Villages) (the "District") in order to finance public infrastructure improvements (the "Project") related to the District; and,

WHEREAS, the City desires to retain the services of professional financial consultants to assist with evaluating the financial feasibility of the City issuing bonds on behalf of the District in accordance with its policies and procedures, as more fully described in the "Scope of Services"; and,

WHEREAS, the City desires independent evaluation services in connection with the proposed Project financing, including the financial feasibility analysis related to the contemplated District formation and recommendations on the sale or placement of tax-exempt bonds; and,

WHEREAS, the Financial Advisor represents it is well qualified to provide professional financial advisory services to public entities and the City.

3. The City and the Financial Advisor shall mutually agree as to the method and manner of performing the services described herein prior to the Financial Advisor commencing any services.

B. PHASE I (EVALUATION OF FINANCIAL FEASIBILITY)

1. The Financial Advisor shall familiarize itself with the City's applicable financing policies/procedures and subsequently review the financial feasibility of the City issuing bonds to finance public improvements for the District.

2. When deemed necessary by the City, the following services shall be provided by the Financial Advisor in Phase I:

(a) Attend meetings concerning the Project financing and be available to meet with affected property owner(s) to answer questions and explain the effects of any proposed financing.

(b) Conduct and/or participate in work sessions and seminars, at the request of the City, which may be held to discuss the District and methods of public financing.

(c) Advise the City on the need for additional consultants (e.g., Real Estate Appraiser, Market Absorption Consultant, Special Tax Consultant) and develop an appropriate budget for such consultation.

(d) Work with City staff, its consultants, and the Project applicant to summarize the proposed public infrastructure improvements and service costs, if any, to be addressed for the District's financing program.

(e) Attend and participate in all public hearings and public meetings as requested.

3. The Financial Advisor shall prepare a feasibility report (the "Report") for the Project which shall:

(a) Analyze the financial feasibility and appropriateness of a community facilities

impact the value-to-lien ratio in the future; and, estimate potential debt capacity.

(f) Review property tax bills for properties located within the District to determine the existing tax burden. Estimate the potential capacity for levying any new or increased taxes and/or assessments, assuming a maximum two percent (2%) tax burden.

(g) Present cash flow analyses illustrating various debt amortization structures and suggest marketing strategies that will maximize bond buyer interest in the Project's Financing.

(h) Recommend a financing plan for addressing the funding requirements of the Project and services, if any.

(i) Outline a recommended financing program, implementation steps, and procedures.

C. PHASE II (DEBT ISSUANCE SERVICES)

Phase II services shall begin upon approval by the City Council of a resolution approving the issuance of bonds.

1. The Financial Advisor shall evaluate existing and expected bond market conditions, pertinent features related to the pending issuance, and the financing time schedule associated with the City's financing. Using these and other factors, the Financial Advisor shall develop a proposed method of sale.

2. The Financial Advisor shall work with City staff and bond counsel to coordinate the financing, as well as prepare a financing schedule for all participants.

3. The Financial Advisor shall thoroughly review and comment on each iteration of the Official Statement to assist in the production of a comprehensive, effective document.

4. The Financial Advisor shall review all bond documents, trust indentures, acquisition and funding agreements, continuing disclosure agreements, loan agreements,

elements of this scope of work without the prior written authorization of the City.

11. With respect to the bond closing, the Financial Advisor shall assist all parties involved in the sale of the bonds with the completion of required tasks, including printing and completion of the final official statement, preparation of closing documents, and arrangement for the efficient transfer and investment of funds.

12. If requested by the City, the Financial Advisor shall provide advice on investment of bond issue proceeds. The Financial Advisor shall recommend investment strategies that optimize investment earnings without sacrificing the security of the principal. The Financial Advisor shall only recommend investments that comply with applicable laws, rules, regulations, bond covenants, and City policies.

ARTICLE II - SERVICES PROVIDED BY THE CITY

The City shall provide the Financial Advisor with all records, data, and plans in the possession of the City necessary for the performance of the obligations required by this Agreement.

ARTICLE III - COMPENSATION

A. INVOICES

1. The Financial Advisor shall submit detailed invoices to the City on a monthly basis for services performed.

2. All invoices shall include the names and rates of pay for the Financial Advisor's personnel who have performed services on behalf of the City, the hours worked, and details of reasonable and necessary out-of-pocket expenses.

3. In no event shall the Financial Advisor be reimbursed for expenses in excess of ten thousand dollars (\$10,000) pursuant to this Agreement. The total expenses which the Financial Advisor may be reimbursed for in Phase I shall not exceed five thousand dollars (\$5,000). The total expenses the Financial Advisor may be reimbursed for in Phase II shall not exceed five thousand dollars (\$5,000).

E. PAYMENT

1. The City hereby agrees to pay all proper invoices for all services provided pursuant to this Agreement within at least thirty (30) calendar days from receipt.
2. All fees shall be based on hourly rates, and shall be due and payable monthly, within thirty (30) calendar days of billing.

ARTICLE IV - INDEPENDENT CONTRACTOR

A. DELEGATION OF DUTIES

1. The Financial Advisor shall perform its services as an independent contractor. It is understood that this Agreement is for unique professional services. Accordingly, the duties specified in this Agreement may not be delegated by the Financial Advisor without the prior written consent of the City.
2. Retention of the Financial Advisor is based on the particular professional expertise of the individuals rendering the services required in the Scope of Services.

B. PRINCIPAL

1. It is mutually agreed that Timothy J. Schaefer shall be the principal responsible for the delivery of the described services and will be assisted by James Fabian.
2. While it is understood that portions of the described services may be delegated to other members of the team, or subconsultants, the City reserves the right to request removal of

(b) subsequently becomes publicly known through no act or omission of the Financial Advisor; or

(c) otherwise becomes known to the Financial Advisor other than through disclosure by the City.

B. RETENTION OF RECORDS

1. The Financial Advisor shall retain and maintain accurate records and documents relating to the performance of services under this Agreement for a minimum of three (3) years after final payment by the City, and shall make them available for inspection and audit by the City.

2. The City is the sole owner of all drafts, reports, data, documents, and research prepared by the Financial Advisor and may at any time, request copies, be it hard copies, disks, or otherwise, of all work produced by the Financial Advisor in conjunction with services provided for under this Agreement.

C. OWNERSHIP OF DOCUMENTS

1. Once the Financial Advisor has been compensated for services performed, all documents, including, but not limited to studies, reports, computer printouts, disk files, and documents prepared in connection with or related to the scope of services, shall be the property of the City.

2. The City's ownership of these documents includes all incidental rights, whether or not the work for which they were prepared has been performed.

3. This Section shall apply whether the Financial Advisor's services are terminated:

(a) by the completion of the Project; or

(b) in accordance with other provisions of this Agreement.

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C. CITY'S RIGHT TO TERMINATE FOR DEFAULT

1. If the Financial Advisor fails to perform or adequately perform any obligation required by this Agreement, the Financial Advisor's failure shall constitute a default.

2. If the Financial Advisor fails to satisfactorily cure a default within ten (10) calendar days of receiving written notice from the City specifying the nature of the default, the City may immediately cancel and/or terminate this Agreement, and terminate each and every right of the Financial Advisor; and any person claiming any rights by or through the Financial Advisor under this Agreement.

3. The rights and remedies of the City enumerated in this subsection are cumulative and shall not limit the City's rights under any other provision of this Agreement, or otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to the City against the Financial Advisor.

D. CITY'S RIGHT TO TERMINATE FOR BANKRUPTCY OR ASSIGNMENT FOR THE BENEFIT OF CREDITORS

1. If the Financial Advisor files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, the City may at its option and without further notice to or demand upon the Financial Advisor, immediately cancel and/or terminate this Agreement, and terminate each and every right of the Financial Advisor, and any person claiming any rights or through the Financial Advisor under this Agreement.

2. The rights and remedies of the City enumerated in this subsection are cumulative and shall not limit the City's rights under any other provision of this Agreement, or otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement

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(b)

The Financial Advisor shall nominate a replacement employee to the City and shall not remove any employee from a project until his/her replacement has been approved by the City.

(c) The City reserves the right at its sole discretion to request removal of any of the Financial Advisor's employees assigned to a project when, in the City's opinion, the individual's performance is unsatisfactory.

ARTICLE IX - PRECLUSION

The Financial Advisor and any of its agents or subconsultants shall be precluded from bidding on or trading in the financial instruments involved in financing the District. This preclusion shall apply to all forms of debt financing recommended by the Financial Advisor, its agents or subconsultants.

ARTICLE X - COVENANTS AND CONDITIONS

All provisions hereof expressed as either covenants or conditions on the part of the City or the Financial Advisor to be performed or observed shall be deemed to be both covenants and conditions.

ARTICLE XI - COMPLIANCE WITH CONTROLLING LAW

The Financial Advisor shall comply with all applicable laws, ordinances, rules, regulations and policies of the federal, state and local governments as they pertain to this Agreement. In addition to the foregoing, the Financial Advisor shall comply immediately with any and all directives issued by the City or its authorized representatives under authority of any laws, statutes, ordinances, rules or regulations. The laws of the State of California shall govern and control the terms and conditions this Agreement.

or are caused or claim to be caused by the negligence of Financial Advisor, their its officers, agents, or employees, and all expenses of investigating and defending against same; provided, however, that this indemnification and hold harmless shall not include any claim arising from the sole negligence or willful misconduct of the City, their officers, agents or employees.

ARTICLE XIV - INSURANCE

A. COMMENCEMENT OF WORK

1. The Financial Advisor shall neither commence work under this Agreement until they have obtained all insurance required hereunder in a company or companies acceptable to the City, nor shall the Financial Advisor allow any subcontractor to commence work on a subcontract under this Agreement until all insurance required of the subcontractor has been obtained.

2. At the Financial Advisor's sole cost and expense, the Financial Advisor shall take out and maintain at all times during the term of this Agreement the following policies of insurance:

(a) all applicable insurance for personal injury, bodily injury, and property damage, providing coverage to a combined single limit of one million dollars (\$1,000,000) per occurrence, subject to an annual aggregate of one million dollars (\$1,000,000) for general liability, completed operations, and personal injury, other than bodily injury;

(b) workers' compensation insurance for all of Financial Advisor's employees who are subject to this Agreement, to the extent required by the State of California, providing coverage for combined single limit of at least one million dollars (\$1,000,000) per occurrence;

(c) automobile insurance for all of the Financial Advisor's automobiles, including owned, hired, and non-owned automobiles, automobile insurance for bodily injury, and property

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Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement, the City shall immediately terminate this Agreement by giving written notice thereof. The Financial Advisor agrees to abide with Section 87100 et. seq. of the California Government Code during the term of the Agreement. The City may determine that the Financial Advisor is subject to a conflict of interest code and is required to complete one or more statements of economic interest disclosing relevant financial interests. Upon the City's request, the Financial Advisor shall submit the necessary documentation.

ARTICLE XVI - ATTORNEY'S FEES

If either party brings any action or proceeding to enforce, protect or establish any right or remedy arising out of or based upon this Agreement, including but not limited to the recovery of damages for its breach, the prevailing party in said action or proceeding shall be entitled to recovery of its costs and reasonable attorneys' fees.

ARTICLE XVII - NOTICES

In all cases where written notice is to be given under this Agreement, service shall be deemed sufficient if said notice is deposited in the United States mail, postage paid. When so given, such notice shall be effective from the date of mailing of the same. For the purpose hereof, unless otherwise provided by notice in writing from the respective parties, notice to the City shall be addressed to Financing Services Manager, City of San Diego, 202 "C" Street, MS-7B, San Diego, California 92101. Notice to the Financial Advisor shall be addressed to Timothy J. Schaefer, Executive Vice President, Fieldman, Rolapp & Associates, 2100 Main Street, Suite 210, Irvine, CA 92614. Nothing herein contained shall preclude or render inoperative service or such notice in the manner provided by law.

against the Financial Advisor up to and including contract termination, debarment, and other sanctions for violation of the provisions of the *Nondiscrimination in Contracting Ordinance*.

The Financial Advisor further agrees that the procedures remedies, and sanctions provided for in the *Nondiscrimination in Contracting Ordinance* apply only to violations of said Nondiscrimination Ordinance.

B. LOCAL BUSINESS AND EMPLOYMENT

1. The Financial Advisor acknowledges that the City of San Diego seeks to promote employment and business opportunities for local residents and firms on all City contracts. The Financial Advisor will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts for work associated with this Agreement from local residents and firms as opportunities occur. The Financial Advisor agrees to hire qualified local residents and firms whenever feasible.

2. The Financial Advisor understands that failure to comply with the above requirements, and/or submitting false information in response to these requirements, may result in withholding progress payments until consultant complies with above, or termination of this Agreement, and/or suspension from participating in future City contracts as a prime or subconsultant, for a period of not less than one (1) year. For additional or subsequent violations, the period of suspension may be extended for a period of up to three years. Failure to satisfy penalties imposed pursuant to this section shall prohibit the consultant from participating in future City contracts until all penalties have been satisfied.

ARTICLE XIX - DRUG-FREE WORKPLACE

The Financial Advisor agrees to comply with the City's Drug Free Workplace requirements. Every person or organization awarded a contract by the City of San Diego for the

B. CALIFORNIA LAW

This Agreement shall be construed and interpreted in accordance with the laws of the State of California. The Financial Advisor covenants and agrees to submit to the personal jurisdiction of any state court in the State of California for any dispute, claim or matter arising out of or related hereto.

C. INTEGRATED AGREEMENT

This Agreement including Attachments and/or Exhibits contains all of the agreements of the parties and all prior negotiations and agreements are merged herein. This Agreement cannot be amended or modified except by written agreement, and mutually agreed upon by the city and the Financial Advisor.

D. SEVERABILITY

The unenforceability, invalidity or illegality of any provision of this Agreement shall not render any other provision unenforceable, invalid or illegal.

E. WAIVER

The failure of the City to enforce a particular condition or provision of this Agreement shall not constitute a waiver of that condition or provision or its enforceability.

F. HEADINGS

All headings in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

G. NON-ASSIGNMENT

The Financial Advisor shall not assign the obligations under this Agreement, nor any monies due or to become due, without the City's prior written approval. Any assignment in

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IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego acting
by and through its City Manager and by the Financial Advisor.

Dated this 14TH day of Nov., 2000.

THE CITY OF SAN DIEGO

By: Patricia T. Frazier
Patricia T. Frazier
Deputy City Manager
Financial, Organization Development and Management Services Business Center

Date: 11/14/00

FIELDMAN, ROLAPP & ASSOCIATES

By: Timothy J. Schaefer
Timothy J. Schaefer
Principal

Date: 11/1/00

I HEREBY APPROVE the form and legality of the foregoing Agreement this 14th day of Nov, 2000.

CASEY GWINN, City Attorney

By: Kelly J. Salt
Kelly J. Salt
Deputy City Attorney

performance under the EEO Policy and maintains written documentation of these reviews;

5. The Consultant discusses its EEO Policy Statement with subconsultants with whom it anticipates doing business, includes the EEO Policy Statement in its subcontracts, and provides such documentation to the City upon request;
6. The Consultant documents and maintains a record of all bid solicitations and outreach efforts to and from subconsultants, consultant associations and other business associations;
7. The Consultant disseminates its EEO Policy externally through various media, including the media of people of color and women, in advertisements to recruit, maintains files documenting these efforts, and provides copies of these advertisements to the City upon request;
8. The Consultant disseminates its EEO Policy to union and community organizations;
9. The Consultant provides immediate written notification to the City when any union referral process has impeded the Consultant's efforts to maintain its EEO Policy;
10. The Consultant maintains a current list of recruitment sources, including those outreaching to people of color and women, and provides written notification of employment opportunities to these recruitment sources with a record of the organizations' responses;
11. The Consultant maintains a current file of names, addresses and phone numbers of each walk-in applicant, including people of color and women, and referrals from unions, recruitment sources, or community organizations with a description of the employment action taken;
12. The Consultant encourages all present employees, including people of color and women employees, to recruit others;
13. The Consultant maintains all employment selection process information with records of all tests and other selection criteria;
14. The Consultant develops and maintains documentation for on-the-job training opportunities and/or participates in training programs for all of its employees, including people of color and women, and establishes apprenticeship, trainee, and upgrade programs relevant to the Consultant's employment needs;
15. The Consultant conducts, at least annually, an inventory and evaluation of all employees for promotional opportunities and encourages all employees to seek and prepare appropriately for such opportunities;
16. The Consultant ensures the company's working environment and activities are non-segregated except for providing separate or single-user toilets and necessary changing facilities to assure privacy between the sexes;
17. The Consultant establishes and documents policies and procedures to ensure job classifications, work assignments, promotional tests, recruitment and other personnel practices do not have a discriminatory effect; and
18. The Consultant is encouraged to participate in voluntary associations which assist in fulfilling one or more of its non-discrimination obligations. The efforts of a consultant association, consultant/community professional association, foundation or other similar group of which the Consultant is a member will be considered as being part of fulfilling these obligations, provided the Consultant actively participates.

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publicly-owned business, at least fifty-one percent [51%] of the stock must be owned by, and the business operated by, socially and economically disadvantaged individuals.

4. Certified "**Disabled Veteran Business Enterprise**" [DVBE] means a business which is at least fifty-one percent [51%] owned by one or more veterans with a service related disability and whose management and daily operation is controlled by the qualifying party(ies).
5. "**Other Business Enterprise**" [OBE] means any business which does not otherwise qualify as Minority, Woman, Disadvantaged or Disabled Veteran Business Enterprise.

H. Certification

1. The City of San Diego is a signatory to a Memorandum of Understanding [MOU] with the California Department of Transportation [CALTRANS], and therefore has adopted a policy regarding certification of MBE/WBE/DBE/DVBE firms. As a result of the MOU, an MBE, WBE or DBE is certified as such by any of the following methods:
 - a. Current certification by the City of San Diego as MBE, WBE, or DBE;
 - b. Current certification by the State of California Department of Transportation [CALTRANS] as MBE, WBE or DBE;
 - c. Current *interim certification* as MBE, WBE or DBE by any member agency of the San Diego Joint Agency Contracting Opportunities Task Force [JACO: County of San Diego, San Diego Unified Port District, San Diego County Water Authority, San Diego City Schools, San Diego Association of Governments, Metropolitan Transit Development Board, or the City of San Diego]; or
 - d. Current MBE, WBE or DBE certification from any participating agency in the statewide certified pool of firms known as CALCERT.
2. DVBE certification is received from the State of California's Department of General Services, Office of Small and Minority Business, (916) 322-5060.
- I. To permit monitoring of compliance, successful proposer shall submit to EOCP *Contract Activity Reports* [see Attachment 6] reflecting work performed by subconsultants.

ATTACHMENTS:

- 1 San Diego Municipal Ordinance No. 18173, Section 22.701 through 22.2708
 - 2 Equal Opportunity Agreement
 - 3 Work Force Report
 - 4 Subconsultants List
 - 5 Outreach and Teaming Survey
 - 6 Contract Activity Report
 7. Consultant Certification for a Drug-Free Workplace
- Attachment 1 Consultant Evaluation Form

EQUAL OPPORTUNITY AGREEMENT

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NON-DISCRIMINATION CLAUSE: Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Contractor shall ensure that its subcontractors comply with the City of San Diego's Equal Employment Opportunity Program.

EQUAL EMPLOYMENT OPPORTUNITY (EEO): Contractor has received, read, understands and agrees to be bound by the City of San Diego *Municipal Code*, Chapter II, Article 2, Division 27. (Equal Employment Opportunity Program) provided with the proposal package.

Contractor has submitted either a *Work Force Report* or an *Equal Employment Opportunity Plan* as required by Section 22.2705 of the City of San Diego *Municipal Code*.

City and Contractor agree that compliance with EEO provisions will be implemented, monitored, and reviewed by the City's Equal Opportunity Contracting Program (EOCP) staff.

EQUAL OPPORTUNITY CONTRACTING: Contractor has received, read, understands and agrees to be bound by the Equal Opportunity Contracting Program requirements described in the proposal package.

If requested, Contractor shall submit the *Outreach and Teaming Survey*. Contractor agrees to provide updated reports as requested by the City.

Contractor agrees to insert equal opportunity compliance language in all subcontracts for any work covered by this Agreement so that such provisions will be binding upon each subcontractor.

Project Name: _____ Bid No.: _____

Company Name: _____ Date: _____

Authorized Signature

Print Authorized Signature Name

(Revised 2/98)

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WORK FORCE REPORT - Page 2

NAME OF FIRM: _____

DATE: _____

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force.

Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- | | |
|--|--|
| (1) African-American, Black | (5) Filipino |
| (2) Latino, Hispanic, Mexican-American, Puerto Rican | (6) Caucasian |
| (3) Asian, Pacific Islander | (7) Other Ethnicities; not falling into other groups |
| (4) American Indian, Eskimo | |

OCCUPATIONAL CATEGORY	(1) African-American		(2) Latino		(3) Asian		(4) American Indian		(5) Filipino		(6) Caucasian		(7) Other Ethnicities	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Executive, Administrative, Managerial														
Professional Specialty														
Engineers/Architects														
Technicians and Related Support														
Sales														
Administrative Support/Clerical														
Services														
Precision Production, Craft and Repair														
Machine Operators, Assemblers, Inspectors														
Transportation and Material Moving														
Handlers, Equipment Cleaners, Helpers and Nonconstruction Laborers*														

*Construction labors and other field employees are not to be included on this page

TOTALS EACH COLUMN														
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GRAND TOTAL ALL EMPLOYEES

INDICATE BY GENDER AND ETHNICITY THE NUMBER OF ABOVE EMPLOYEES WHO ARE DISABLED:

DISABLED														
----------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

NON-PROFIT ORGANIZATIONS ONLY:

BOARD OF DIRECTORS														
VOLUNTEERS														
ARTISTS														

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State of California Department of Transportation

CALTRANS

San Diego Joint Agencies Contracting Opportunity Task Force

JACO

ATTACHMENT (5)

OUTREACH AND TEAMING SURVEY
CONSULTANTS

Prime: _____
Project Title: _____
Original Contract: ☐ Yes ☐ No Amendment No: _____ Change Order No: _____
Job Order No: _____ Bid No: _____

Submit this *Outreach and Teaming Survey* within five (5) working days after date of notification of your firm's selection and return to:

City of San Diego, Equal Opportunity Contracting Program (EOCP)
1010 Second Avenue, Suite 500
San Diego, CA 92101
FAX: (619) 533-4474

The City of San Diego encourages subconsulting activity at levels reflecting the diversity of the City's population. Information from this survey will be used by EOCP staff to monitor successful outreach and teaming strategies used by consultants to ensure non-discrimination on City projects. Levels of participation shall not impact a consultant's ability to receive this contract or submit proposals for future contracts.

Please respond to the following questions (if necessary, attach additional pages):

1. Did your firm identify a need to utilize subconsultants on this project? If so, which specific scopes of work were targeted for subconsulting?
2. Describe your firm's overall strategy to outreach and team on this project. Did you negotiate? Did you invite bids? Did you make the project plans and specifications available?

OUTREACH AND TEAMING SURVEY (continued)

3. If you invited sub-bids, identify each of the sub-bidders by scope of work and their bid amounts. How much time were sub-bidders given to respond?
4. Did your firm advertise the subconsulting opportunities of this project in any publication? Which publications? What dates? Attach copies of published ads. What other outreach efforts did you employ?

ATTACHMENT (6)'

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PROJECT: _____ PRIME CONSULTANT: _____
CONTRACT AMOUNT: _____ INVOICE PERIOD: _____ DATE: _____

Include Additional Services Not-To-Exceed Amount

[illegible]

(Revised 2/98)